

THOMAS G. WYMAN
375 PARK AVENUE
NEW YORK, N. Y. 10152
(212) 755-0607

Mr. Jeffrey D. Morgan
Interface Communications Group, Inc.
7490 Clubhouse Road, Suite 200
Boulder, Colorado 80301

The
26th
May
1994

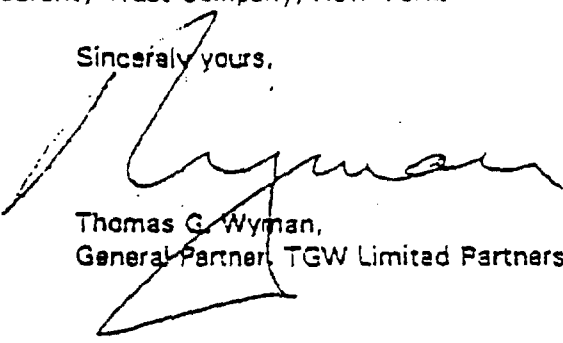
Dear Jeff,

As the sole General Partner of the TGW Limited Partnership, I hereby warrant and represent that I am placing at the disposal of Interface Communications Group, Inc. the amount of \$750,000, available upon demand.

This Letter of Credit is being offered to Interface upon the assumption that Interface has entered into a Services Agreement with US West Communications, Inc. to be a Level 3 video provider to its Video Dialtone Trial in Omaha, Nebraska. The term of this Letter of Credit shall be concurrent with the term of the Services Agreement, a copy of which I have received and reviewed.

I further represent and warrant that the net worth of TGW Limited Partnership is in excess of \$20 million and its financial capability can be evidenced through Morgan Guaranty Trust Company, New York.

Sincerely yours,



Thomas G. Wyman,
General Partner, TGW Limited Partnership

jtz

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SERVICES AGREEMENT ADDENDUM

THIS SERVICES AGREEMENT ADDENDUM is made this 5th day of October, 1994, between U S WEST Communications, Inc., ("U S WEST") and INTERFACE COMMUNICATIONS GROUP, INC. ("OWNER:") and is for the purpose of amending and superseding certain of the provisions of the Services Agreement dated May 27, 1994 between the parties. This Addendum takes the place of and supersedes those portions of any articles or sections of the Services Agreement that deal with the same subject matter as provided for in this Addendum and if provisions of this Addendum and the Agreement conflict, then the provisions of this Addendum will control.

1. Article 3.1, Product Availability is amended to include Owner's provision of Pay-Per-View Events, defined as broadcast live or delayed events, such as boxing matches, concerts, and other sporting events, delivered using analog signals at scheduled times.

2. Article 7, INSURANCE is replaced with the following Article 7.

Errors and Omissions insurance shall be provided by Owner relating to Selected Channels as follows. On or before the beginning of the Technical Trial, Owner shall obtain, at its sole cost and expense, a policy of insurance, in form and substance acceptable to USWC, from an insurer acceptable to USWC, covering any liability of Owner with respect to its operation and provision of Selected Channels. Such insurance shall have a minimum policy coverage of Two Million Dollars (\$2,000,000) for all claims in the aggregate and shall continue for the period of the Trials. USWC shall be named as an additional insured on such insurance and Owner shall deliver a certificate of insurance and additional insured endorsement to USWC as part of Delivery in accordance with the Delivery Schedule. Such insurance shall be primary, and not contributing with any other insurance maintained by USWC, and may not be cancelable to USWC without first providing USWC with thirty (30) days written advance notice of cancellation. Thereafter, Owner shall self insure with

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respect to its operation and provision of Selected Channels
for a period of three years after termination of the Trials.

AGREED TO AND ACCEPTED:

U S WEST Communications, .
INC

[Signature]
(Authorized Signature)

DAVID S. LOVINE
(Print or Type Name)

VP & GM RECORDING & MULTIMEDIA
(Title) SUS

10/5/94
(Execution Date)

INTERFACE COMMUNICATIONS
GROUP, INC.

[Signature]
(Authorized Signature)

JEFFREY D MORGAN
(Print or Type Name)

PRESIDENT
(Title)

10/11/94
(Execution Date)

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SERVICES AGREEMENT ADDENDUM

THIS SERVICES AGREEMENT ADDENDUM is made this ____ day of _____, 1995, between U S WEST Communications, Inc., ("USWC") and INTERFACE COMMUNICATIONS GROUP, INC. ("OWNER") and is for the purpose of amending and superseding certain of the provisions of the Services Agreement dated May 27, 1994 between the parties. This Addendum takes the place of and supersedes those portions of any articles or sections of the Service Agreement that deal with the same subject matter as provided for in this Addendum and if provisions of this Addendum and Agreement conflict, then the provisions of this Addendum will control.

1. Article 3.5(a). Payments By Owner, is a new section as follows.

(a) USWC will charge Owner twenty five cents (\$.25) per Pay Per View movie or event ordered, billed and collected.

2. Article 7, INSURANCE, is replaced with the following Article 7.

Errors and Omissions insurance shall be provided by Owner related to Selected Channels as follows. On or before the beginning of the Technical Trial, Owner shall obtain, at its sole cost and expense, a policy of insurance, in form and substance acceptable to USWC, from an insurer acceptable to USWC, covering any liability of Owner with respect to its operation and provision of Selected Channels. Such insurance shall have a minimum policy coverage of Two Million Dollars (\$2,000,000) for all claims in the aggregate and shall continue until the end of the first annual term of the policy, which upon information is to be on or about February 15, 1996. Thereafter, Owner may discontinue providing Errors and Omissions Insurance for the operation and provision of Selected Channels. USWC shall be named as an additional insured on such insurance and Owner shall deliver a certificate of insurance and additional insured endorsement to USWC as part of Delivery in accordance with the Delivery Schedule. Such insurance shall be primary, and not contributing with any other insurance maintained by USWC, and may not be cancelable to USWC without first providing USWC with thirty (30) days written notice of cancellation. Thereafter, Owner shall self insure with respect to its operation and provision of Selected Channels for a period of three years after termination of the Trials, and shall remain responsible for obligations and liabilities covered by the Errors and Omissions insurance after its cancellation.

3. Article 11.2(a) Buy-out Formula, is replaced with the following Article 11.2(a).

(a) the \$328 per Eligible Subscriber will be adjusted upward five (5) percentage points (to be capped at 15 percentage points) for each \$1.00 Owner's gross billing (which amount includes any taxes applicable to Owner's Channels) per Eligible Subscriber exceeds \$26.00 per month based on the three month average revenue per Eligible Subscriber for the three months prior to termination; or

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4. Article 11.2(d) Buy-out Formula. is a new section as follows.

(d) if penetration of residences passed exceeds 15%, the \$328 per eligible subscriber will be adjusted upward 5 percentage points for each \$1.00 Owner's gross billing exceeds \$26.00. The total adjustment will not be capped. Pay per view movie and event revenues will be included in the average gross billing per customer.

5. Article 11.3(c). Eligible Subscribers and Payment of Buy-Out Amounts. is replaced with the following Article 11.3(c).

(c) USWC and Owner will identify each Subscriber who becomes a Subscriber during the forty five (45) days preceding the termination of the Market Trial. and who remains a Subscriber for at least forty five (45) days and is not more than thirty (30) days past due, who will be verified as "Eligible Subscribers";

6. Article 11.3(d). Eligible Subscribers and Payment of Buy-Out Amounts. is replaced with the following Article 11.3(d).

(d) USWC will pay Owner the amount as determined in Article 11.2 times the number of "Eligible Subscribers" identified pursuant to Article 11.3(c) as early as possible, but no longer than ninety (90) days, after the end of the Market Trial; provided however,

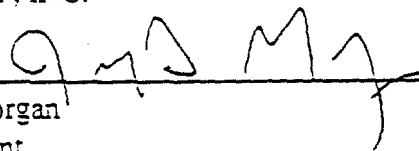
AGREED TO AND ACCEPTED:

U S WEST Communications, Inc.


Larry Levine
Vice President & General Manager
Multimedia Services

JUNE 12, 1995
(Execution Date)

INTERFACE COMMUNICATIONS
GROUP, INC.

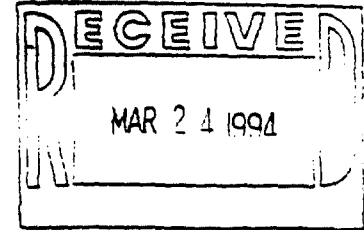

Jeff Morgan
President

JUNE 23, 1995
(Execution Date)

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March 25, 1994

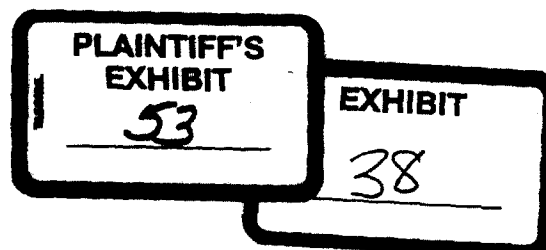


To: Alice Baisley
Grant Gabrielson
Nancy Sullivan
Audley Webster

Fr: Jeannette Noyes (965-0799)

Re: Post-Contract Kick-Off Meeting with Interface

Attached you'll find a proposed agenda for a kick-off meeting with Interface in Omaha. We won't schedule a date until the contract is (or about to be) signed. In the meantime, I'd like your feedback on the agenda—appropriateness of topic areas and speakers. I'm in the process of putting together the research presentation so that Sharon Devine can review it ahead of time.



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Interface/USWC Omaha Trial Kick-Off Meeting

Location: Omaha Video Marketing & Operations Center

Date: Soon after Contract Signed

Time Limit: All Day

Proposed Agenda

Purpose: Open dialog among Interface and U S WEST staff involved in Omaha broadband trial, including identification of information needs among both organizations.

- 11:40 Arrival (Continental flight leaves Denver at 9:05)
(Grant, et al. meet us at the airport, we pile into a couple vans)
- 11:40 - 12:30 Drive to Video Marketing & Operations Center
(VMOC) with detour through trial site neighborhood
- 12:30 - 1:15 Lunch at VMOC
- 1:15 - 1:45 Introductions, roles & responsibilities, trial timeline
Audley Webster or Nancy Sullivan
- 1:45 - 2:30 Development of Sales and Installation Processes
Nancy Sullivan and/or Grant Gabrielson
- 2:30 - 2:45 Break
- 2:45 - 3:30 Development of Sales Training Materials
Alice Baisley
- 3:30 - 4:15 Market Research Overview
Jeannette Noyes
- 4:15 - 4:45 Discussion: identify action items
- 4:45 To airport (Continental flight at 5:40, lands at 6:08)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MOSTLY MEDIA, INC.; PIXEL IMAGE
TRANSFORMATTE, INC.; and
IMAGEWARE, INC. d/b/a Cottonwood
Communications; Nebraska Corporations,

Plaintiffs,

v.

U.S. WEST COMMUNICATIONS, INC.
and U.S. WEST MARKETING
RESOURCES GROUP, INC., d/b/a
U.S. West Direct; Colorado Corporations,

Defendants.

NO: 8:CV94-00089

AFFIDAVIT OF LARRY S. LEVINE



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AFFIDAVIT OF LARRY S. LEVINE

I, Larry S. Levine, being of lawful age, and after being duly sworn under oath, depose and state:

1. This Affidavit is submitted in support of Defendants' Motion to Quash Subpoenas issued to Herman Budnick/RSVP Information, Inc. and J.C. Penney Co., Inc.

2. I am the Vice President and General Manager, Mass Markets and Operations, for U S WEST Communications, Inc. ("U S WEST") and the head of the Broadband and Multimedia Services Group. This Group is responsible for coordinating the testing and deployment of the U S WEST broadband network, testing and launching multimedia transport and switching services over the U S WEST broadband network, and conceiving, developing, testing and deploying interactive television entertainment and information services delivered to its customers via advanced multimedia platforms.

3. I am familiar with the types of information provided to potential developers of applications for the U S WEST broadband network trial in Omaha, Nebraska, and the reasons for which such information is considered highly sensitive, confidential, proprietary business information, and/or trade secrets.

4. The interactive video market is in a state of intense competition at the moment, as potential network providers jockey for position and to have their format or look and feel adopted as an industry standard. Application developers are also in fierce competition in trying to determine what the market currently demands in terms of interactive video applications, how competitors plan to fill those needs, and predicting what products the market will demand in the future.

5. The U S WEST broadband network is likely to provide services similar to and in competition with traditional cable television service. The U S WEST broadband network will include an enhanced video services platform (the "Platform") on which providers place various interactive video applications, which can be accessed by the consumer using a home television set hooked up to the network.

6. The U S WEST Platform provides the means by which the public can access interactive applications (e.g. home shopping, movies on demand, and video games on demand) over the broadband network.

7. The U S WEST Platform has been developed at great effort and expense over the past two years. The user interface for the platform has a unique look and feel, based upon extensive U S WEST research and development. That look and feel consists of U S WEST proprietary information such as the navigator system for accessing the various interactive

applications that will be offered on the Platform, and for maneuvering within that system, for example: the paging forward and backward mechanism; the layout of information displayed on the television screen (including the number of buttons the user can see and use at any given time); and the way in which the remote control device will be used.

8. The technology, research, and ideas included in the platform developed by U S WEST is extremely valuable, confidential and sensitive information. U S WEST devoted at least two years and an enormous amount of resources towards the development of this Platform. More than 100 U S WEST and vendor employees, including engineers, marketing experts, human interface designers and software developers have worked on this project on a full or part time basis during the past two years.

9. U S WEST will make the applications offered on its Platform available to the public by purchasing transport services at the tariffed rates generally available to the public. Disclosure of its Platform technology and look and feel would irreparably damage U S WEST because other multimedia businesses who are contemplating creating their own networks or platforms could plagiarize U S WEST's ideas and research results. U S WEST is in competition with virtually every cable television carrier, as most cable companies are planning to launch interactive video services in the near future using traditional cable technology. In addition, U S WEST is currently aware of at least 10 other multimedia companies, including AT&T and all of the Regional Bell Operating Companies, who are currently in the process of creating, or are contemplating creating their own interactive video platforms using video dialtone technology, who may directly compete with U S WEST. Finally, many other multimedia companies may be considering creating their own networks or platforms for on-line interactive video services.

10. Information regarding the types of video applications that will be offered on the U S WEST interactive broadband network is also extremely sensitive. U S WEST has performed market research on the types of applications that would be of interest to the public and is developing those applications either on its own or with partners for its network trial based upon the results of that research. That marketing information, which includes research on interactive telemedicine applications and home shopping applications, is extremely valuable to U S WEST, and would be harmful to U S WEST if it were made available to a competitor or the public, because then competitors of U S WEST could create platforms with competing applications using U S WEST's proprietary information.

11. For this reason, U S WEST jealously guards all information regarding its contacts with potential developers of applications for its video broadband network. Even the mere fact that U S WEST has met with a potential developer is sensitive and proprietary, because it reveals U S WEST's belief that the types of programming offered by that entity may be valuable. That U S WEST has entered into negotiations with, or signed a contract with an applications developer is even more sensitive, as are the terms and conditions of any such negotiations or contracts.

12. U S WEST would be critically and irreparably damaged if either (1) the Platform look and feel, specifications and requirements; or (2) the applications to be offered on the Platform were revealed to a potential competitor or to the public. A competitor could appropriate the U S WEST technology, market research or application ideas and, using that information, try to copy or improve upon the interactive broadband platform or applications that will be offered by U S WEST.

13. U S WEST has protected its sensitive proprietary information by adopting stringent security measures. The technology for the Platform was developed at U S WEST offices under tight security. Only U S WEST employees displaying badges are allowed to enter those facilities. All others must be escorted within the research facilities by a U S WEST employee. Platform information is divulged to U S WEST employees and vendors only on a need-to-know basis.

14. U S WEST has permitted limited access to its Platform technology only to those application developers whose applications fit with U S WEST's plans for the interactive broadband network, and then only once that customer has signed a Confidentiality Agreement.

15. The process for deciding whether or not a certain application will "fit" with U S WEST's Platform is fairly extensive. U S WEST listens to the application developer's idea and describes in general terms the concept of the U S WEST interactive video service. If both parties are still interested in each other, U S WEST asks the developer to submit a business plan and market research supporting the developer's application. U S WEST then performs an internal feasibility study to determine whether the proposed application can be re-written so that it is compatible with the U S WEST Platform. Only if this feasibility study produces positive results will U S WEST agree to enter into negotiations with the potential applications developer.

16. U S WEST and the potential application developer enter into a Confidentiality Agreement before proceeding with any negotiations. The form used for that Confidentiality Agreement provides, among other things:

That neither party shall disclose the fact that discussions between the parties are taking place;

That neither party shall disclose the existence of the confidentiality agreement, nor the terms and conditions of that agreement;

That neither party shall use the other party's confidential information to replicate the other party's product; and

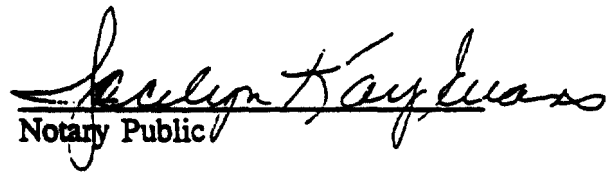
That no copies of any confidential information shall be made without the other party's written consent.

17. Once the Confidentiality Agreement is in place, U S WEST reveals to the potential applications developer the specifications and requirements for the U S WEST Platform that the developer would need to know in order to conform his or her application to the U S WEST Platform. Each copy of the document containing these specifications and requirements is numbered and tracked by the Information Coordinator designated in the Confidentiality Agreement to ensure that it is disclosed only to those people who need the information, and that it is returned to U S WEST, or destroyed, once negotiations terminate.

FURTHER AFFIANT SAYETH NAUGHT.

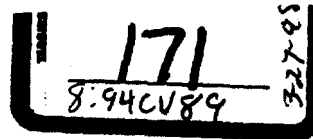

Larry S. Levine

Subscribed and sworn to before me this 7th day of October, 1994.


Notary Public

My commission expires:

3-23-96



AGREEMENT NO.
LTHGR45773

AGREEMENT

This Agreement, Number LTHGR45773, is made by and between U S WEST companies identified herein, a Colorado corporation with offices for transaction of business located at 1999 Broadway, 28th Floor, Denver, Colorado ("Customer") and THE 3DO COMPANY, a California corporation with offices for transaction of business located at 600 Galveston Drive, Redwood City, California 94063 ("Supplier").

In consideration of the mutual promises, covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, Customer and Supplier agree as follows:

1. DEFINITIONS

- 1.1 "Acceptance" means Customer's written acknowledgment that Development Software and Services (each as defined herein) procured hereunder conform to the Specifications (defined herein). Acceptance is further described in the Clause entitled "Acceptance."
- 1.2 "Acceptance Date" means the date that Customer acknowledges Acceptance.
- 1.3 "Acceptance Period" means that time during which Customer determines if Development Software and/or Services conform to the Specifications. Ordinarily, that time period will be thirty (30) days after the actual date of installation of Development Software or the completion of each of the Services. If Development Software and/or Services fail to conform during such time periods described in this Clause, the Acceptance Period shall continue until either: a) the affected Development Software and/or Services have successfully met Acceptance, or b) Customer cancels the development of the affected Development Software and/or Services, or c) the parties mutually agree to change the applicable requirements.
- 1.4 "Agreement" means this written contract between the Parties covering the evaluation of the Standard Software (as defined herein) and Development Software, and the provision of Services, together with other Agreement Documents (defined herein) attached hereto and made a part hereof.
- 1.5 "Agreement Documents" means the Agreement, Task Orders (defined herein), Exhibits and attachments, together with any addenda, amendments, modifications, and supplements to this Agreement issued pursuant to the Article entitled "Amendments" hereof.
- 1.6 "Customer" means U S WEST Communications, Inc., US WEST Marketing Resources Group, Inc. ("MRG"), and/or Interactive Video Enterprises, Inc. ("IVE") In the event and to the extent that U S WEST Technologies, Inc. ("TI"), is/are supporting Customer's activities with respect to the Trial, TI may also issue Task Orders and agrees to be bound by the terms and conditions of this Agreement.
- 1.7 "Development Software" means those certain software programs described in Exhibit I, entitled "Software List" (attached hereto and incorporated herein by this reference), and related user documentation materials that are to be developed by Supplier hereunder for use in the Trial (as defined herein) and that are not part of the

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Standard Software licensed to Customer pursuant to Supplier's standardized form of Software License Agreement.

- 1.8 "Evaluation" means Customer's analysis and assessment of the Standard Software and Development Software used in the Trial, as well as its evaluation of the business activities conducted by Customer to the extent (and only to the extent) such activities directly relate to the Standard Software and/or Development Software).
- 1.9 "Evaluation Results" means a written report prepared by Customer describing in reasonable detail the results of the Evaluation and Customer's conclusions about the performance of the Standard Software and the Development Software, including, without limitation, all technical performance data and information which is related to the Standard Software and Development Software, as well as Customer's assessment of whether the software programs comprising the Standard Software and the Development Software, respectively, offer levels of performance that are inadequate or sufficient or in excess of the applications for which they are intended.
- 1.10 "Services" means each and every separate trial consulting support assignment or undertaking which Supplier agrees to perform on behalf of Customer pursuant to the terms and conditions of a Task Order, and includes the specific deliverable items required to be provided to Customer pursuant to any Task Order.
- 1.11 "Standard Software" means those certain software programs (as described in Exhibit 1) and related user documentation materials, for which Supplier has the right to grant licenses or sublicenses to Customer pursuant to Supplier's standardized form of Software License Agreement.
- 1.12 "Specifications" means criteria, technical or otherwise, in any medium, for the Development Software and Services which are referenced in or made a part of this Agreement or Task Orders.
- 1.13 "Task Order" means supplemental written instructions issued by Customer to Supplier in a format similar to that example attached hereto as Exhibit 2, entitled "Task Order Form," which is by this reference incorporated herein, and signed on behalf of both parties by their authorized representatives, describing in detail, among other things, the description and/or Specifications of the Services to be performed thereunder. Each Task Order shall be supplemental to this Agreement and the first shall be designated "Task Order One," and each successive Task Order shall be similarly identified in numerical order.
- 1.14 "Trial" means the network and gateway services that are part of the types of services familiarly known to the parties as "video dial tone" services to be developed, publicly offered, technically tested, and market tested by Customer in Omaha, Nebraska.
- 1.15 "Trial Results" means a written report prepared by Customer describing in reasonable detail its general technical, market, and business conclusions regarding the Trial.

2. SCOPE

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The purpose of this Agreement is to acknowledge Customer's acceptance of Supplier's proposal, dated June 18, 1993, entitled "The 3DO Proposal to U S WEST for The Omaha

Trial" (the "Proposal"), attached hereto as Exhibit 3 and incorporated herein by this reference; and to establish the terms and conditions under which Supplier will:

- 2.1 Provide the Standard Software and Development Software to Customer for the purposes of Customer (i) installing and using such software as integral parts of the Trial, (ii) testing and evaluating the technical performance of such software during the Trial, and (iii) preparing the Evaluation Results. Certain mutually agreed upon technical requirements, as specified by Customer, shall be utilized as a general guide with respect to Customer's performance of the Evaluation and testing of the Standard Software and Development Software in furtherance of this Agreement. Supplier agrees that the Standard Software and Development Software may require modifications and/or enhancements to meet such technical requirements. In the event that modifications and/or enhancements are required to meet Customer's requirements, Supplier shall perform at Supplier's option such modifications and/or enhancements at no charge to Customer or as part of a mutually agreed and executed Task Order.
- 2.2 Provide Services to Customer as specified in Task Orders issued from time to time by Customer. Supplier shall commence, perform and complete the Services and be compensated by Customer in accordance with the terms and conditions of Task Orders issued hereunder.
- 2.3 Provide to Customer access to Supplier's intellectual property and confidential information, through execution of Supplier's standardized form of Software License Agreement attached hereto as Exhibit 4 and incorporated herein by this reference, sufficient to enable evaluation of Standard Software and the performance of Task Orders. Customer shall be obligated to comply with all provisions of Supplier's standardized form of Software License Agreement (but specifically excluding Section 5.4). It is understood and agreed that Supplier's standardized form of Software License Agreement applies only to the Standard Software and does not apply to the Development Software or to the Services. Customer and Supplier each agree, respectively, to use reasonable best efforts to reach mutual agreement regarding the principal terms and conditions of a separate written agreement with respect to the continued delivery of services to customers in Omaha, Nebraska, at or about the midpoint of the Trial (which is expected to occur on or about March 1, 1995).

3. TERM

The effective term of this Agreement shall be deemed to have commenced on October 1, 1993, and, subject to the provisions of Section 29, below, shall continue in full force and effect until October 31, 1995. Customer may elect to extend the term of this Agreement until November 30, 1995 (or such longer period as may be mutually agreed upon by the parties), by paying Supplier, prior to the expiration of the initial term, the sum of \$156,200.00 with respect to the first month of such extension, and thereafter paying Supplier, prior to the first day of each subsequent calendar month, a further extension fee equal to \$156,200.00, with respect to each such monthly extension.

4. RESPONSIBILITIES OF THE PARTIES

4.1 Supplier's Responsibilities

- 4.1.1 In addition to all other obligations contained herein, for Customer's Trial, Supplier agrees, subject to the provisions of the Proposal, to:

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- 4.1.1.1 Provide the Standard Software and Development Software and related documentation described in Exhibit 1, necessary and sufficient to meet Customer's specifications for the Trial at no charge to Customer.
- 4.1.1.2 Assist Customer in conducting the Trial in a manner consistent with the provisions of this Agreement. This assistance will include, but not be limited to, providing non-confidential technical specifications and other information as reasonably requested at no charge.
- 4.1.1.3 Provide technical support with respect to the Standard Software and Development Software upon request at Customer's site, at no charge to Customer, during the term of this Agreement.
- 4.1.1.4 Provide all training material required for proper operation and maintenance of the Standard Software and Development Software. Training during the Trial will be conducted at Customer's site at no charge.
- 4.1.1.5 Notify Customer of all generally available enhancements and/or modifications to the Standard Software and Development Software during the term of this Agreement. Upon Customer's request, such enhancements and/or modifications will be provided at no charge, if made available to others at no charge.
- 4.1.1.6 Provide a central point of contact for the Trial and the Evaluation.
- 4.1.1.7 Obtain permission from Customer in advance or as otherwise agreed upon when access to Customer's facilities is required.
- 4.1.1.8 Bear, unless otherwise agreed in writing or specified in any Task Order, all expenses including, but not limited to, transportation, modification (as may be required to meet Customer's specifications for the Trial), repair, and maintenance.
- 4.1.1.9 Perform such Services as are required under any Task Orders that are mutually agreed upon by the parties.
- 4.1.2 In addition to all other obligations contained herein, for Services provided to Customer, Supplier agrees:
 - 4.1.2.1 to furnish all material, equipment, labor and supplies in such quantities and of sufficient quality to professionally and timely perform the Services;
 - 4.1.2.2 to proceed with diligence and promptness to perform the Services in accordance with the highest professional workmanship and service standards in the field; and
 - 4.1.2.3 to comply, at its own expense, with the provisions of all state, local and federal laws, regulations, ordinances, requirements and codes which are applicable to the performance of the Services hereunder or to Supplier as an employer.

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4.2 Customer's Responsibilities

4.2.1 In addition to all other obligations contained herein, Customer agrees to:

4.2.1.1 Be responsible for conducting the Trial and preparing the Evaluation in a manner consistent with the requirements of this Agreement;

4.2.1.2 Provide a central point of contact for the Trial and the Evaluation;

4.2.1.3 Prepare the Trial site in accordance with the requirements specified by Supplier; and

4.2.1.4 Provide storage space, heat, lighting, ventilation, and electrical supply required for the Trial site.

5. INDEPENDENT CONTRACTORS

5.1 SUPPLIER AND CUSTOMER ARE INDEPENDENT CONTRACTORS AND NEITHER PARTY IS THE AGENT, EMPLOYEE OR SERVANT OF THE OTHER PARTY.

5.1.1 NEITHER PARTY HAS THE AUTHORITY TO ACT FOR THE OTHER PARTY, OR TO BIND THE OTHER PARTY IN ANY RESPECT WHATSOEVER, OR TO INCUR ANY DEBTS OR LIABILITIES IN THE NAME OF OR ON BEHALF OF THE OTHER PARTY.

5.1.2 EACH PARTY HAS AND HEREBY RETAINS FULL CONTROL OF AND SUPERVISION OVER THE PERFORMANCE OF THEIR RESPECTIVE OBLIGATIONS HEREUNDER AND FULL CONTROL OVER ANY PERSONS EMPLOYED BY EACH PARTY FOR PERFORMING THE SERVICES HEREUNDER.

5.1.3 EACH PARTY SHALL SATISFY ALL TAX AND OTHER GOVERNMENTAL IMPOSED RESPONSIBILITIES AS A SELF-EMPLOYED PERSON AND/OR INDEPENDENT CONTRACTOR INCLUDING, BUT NOT LIMITED TO, PAYMENT OF STATE, FEDERAL AND SOCIAL SECURITY TAXES, UNEMPLOYMENT TAXES, WORKERS' COMPENSATION AND SELF-EMPLOYMENT TAXES.

5.1.4 EACH PARTY UNDERSTANDS AND AGREES THAT AS AN INDEPENDENT CONTRACTOR ITS EMPLOYEES WILL RECEIVE NO BENEFITS OF ANY TYPE FROM THE OTHER PARTY.

5.1.5 NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, SUPPLIER SHALL BE ENTITLED TO PROVIDE SIMILAR SERVICES TO OTHER CUSTOMERS.

6. END OF TRIAL

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6.1 Each party agrees that all Standard Software and Development Software provided under this Agreement throughout the duration of the Trial or until October 31, 1995,

whichever occurs first, are provided without any financial compensation by the other party except as otherwise expressly provided herein or as may be agreed upon in writing by the parties.

- 6.2 At the end of the Trial or upon termination of this Agreement, whichever occurs first, Customer shall remove the Standard Software and Development Software from any and all Trial sites, unless the parties agree otherwise in writing. If Supplier has not been notified by Customer within ten (10) days of the completion of the Trial (which is scheduled to be completed on September 30, 1995), Supplier may request a status report from Customer. In no event shall Supplier assume Customer's silence to be acceptance of any of the Standard Software and/or Development Software or a commitment to purchase any such products and/or software.

7. EVALUATION RESULTS AND TRIAL RESULTS

- 7.1 Within ninety (90) days of the end of the Trial, and in any event no later than March 31, 1996, Customer will provide Supplier with a written report describing in reasonable detail the Evaluation Results and the Trial Results. The Evaluation Results and the Trial Results shall be the property of Customer and shall be deemed to be Confidential Information of Customer under the terms of this Agreement (except to the extent such data, information and/or conclusions directly relate to any of the Standard Software and/or Development Software). Customer represents and warrants that the Evaluation Results shall be shared with and only with Supplier.
- 7.2 Notwithstanding anything to the contrary contained herein, Customer acknowledges and agrees that Supplier may use and exploit the Evaluation Results for the purposes of designing, developing, improving, and/or otherwise modifying the Standard Software, Development Software, Services, and Separate Software Products (as defined in Section 25.2, below), free from any obligation to compensate Customer (or any third party) as a consequence of any such use and/or exploitation.
- 7.3 Customer acknowledges and agrees that it will generally share the Trial Results only with those third parties that have a need to know such information. Nonetheless, Customer may share the Trial Results (but specifically excluding any information directly relating to the Standard Software and/or Development Software), at its sole discretion, with third parties that may not, in fact, have a need to know such information.

8. NON-COMMITMENT

Customer will use all of the Standard Software and Development Software provided under this Agreement for the purpose of evaluation only in connection with the Trial. Customer is under no obligation to procure Supplier's Standard Software and/or Development Software as a result of such evaluation, nor shall such usage be deemed acceptance of any such products or software or a commitment to purchase any such products or software.

9. TITLE AND RISK OF LOSS

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- 9.1 Title to the Standard Software and Development Software shall be and remain vested with Supplier.
- 9.2 As between Supplier and Customer, Supplier shall bear the risk of loss of or damage to the Standard Software and Development Software; provided, however, to the extent any such products or software are damaged due to the negligence or willful

misconduct of Customer, Customer shall bear the risk of loss or damage to such products and/or software.

10. INDEMNITY

- 10.1 To the extent of the negligence, gross negligence or willfulness of Supplier or any person or entity under the direction or control of Supplier, Supplier shall indemnify and hold harmless Customer, its owners, parents, affiliates, subsidiaries, directors, agents and employees from and against all judgments, orders, awards, claims, damages, losses, liabilities, costs and expenses, including, but not limited to, court costs and reasonable attorneys' fees ("Liabilities") arising from the acts or omissions of Supplier, its agents and employees and others under its direction or control, with respect to the performance of its obligations under this Agreement. Such Liabilities shall include, but not be limited to, those which are attributable to personal injury, sickness, disease or death; and/or result from injury to or destruction of real or personal property, theft, misuse or misappropriation.
- 10.2 To the extent of the negligence, gross negligence or willfulness of Customer or any person or entity under the direction or control of Customer, Customer shall indemnify and hold harmless Supplier, its owners, parents, affiliates, subsidiaries, directors, agents and employees from and against all Liabilities arising from the acts or omissions of Customer, its agents and employees and others under its direction or control, with respect to the performance of its obligations under this Agreement. Such Liabilities shall include, but not be limited to, those which are attributable to personal injury, sickness, disease or death; and/or result from injury to or destruction of real or personal property, theft, misuse or misappropriation.
- 10.3 In addition, each party agrees, respectively, to indemnify and hold harmless the other party, its owners, parents, affiliates, subsidiaries, directors, agents and employees from and against Liabilities that arise out of its breach of any of the terms and conditions of this Agreement.

11. TRADEMARK AND COPYRIGHT INDEMNIFICATION

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- 11.1 Supplier shall indemnify and hold harmless Customer, its owners, parents, affiliates, subsidiaries, directors, agents and employees from and against all Liabilities that may result by reason of any infringement or claim of infringement of any trademark or copyright relating to Standard Software, Development Software or Services; provided that Customer provides Supplier with prompt written notice of the assertion of any such claim and gives Supplier the exclusive authority to control the defense and/or settlement of any resulting action or proceeding. Supplier will defend and/or settle at its own expense any action brought against Customer to the extent (and only to the extent) that it is based on a claim that Standard Software, Development Software or Services infringe any effective U.S. trademark or copyright. MOSTLY MEDIA 0014403
- 11.2 In the event that any Standard Software or Development Software, in Supplier's reasonable opinion, is likely to become or becomes the subject of a claim of infringement, Supplier may, in order to mitigate any resulting damages, notify Customer of such facts and request that Customer discontinue using such Standard Software or Development Software within forty five (45) days of the date of its receipt of such request. Customer may elect to continue using any affected Standard Software or Development Software after the expiration of such notice period, solely on the condition that Customer (i) releases and discharges Supplier

from all Liabilities arising in connection with Customer's use of any such software and/or related items after the expiration of such forty five (45) day notice period, and (ii) indemnify and hold harmless and, at Supplier's option, defend Supplier from and against all such resulting Liabilities arising in connection with Customer's use of any of the Standard Software or Development Software after the expiration of such forty-five (45) day notice period.

11.3 If a preliminary or final judgment shall be obtained against Customer's use of any Services (or any part thereof) by reason of alleged infringement of any effective U.S. trademark or copyright, or if, in Supplier's opinion, any Services (or any part thereof) are likely to become subject to such a claim of infringement, Supplier shall, at its sole option and expense, and as Customer's exclusive remedy regarding any such matter, either:

11.3.1 procure for Customer the right to continue using such affected Services (or affected part thereof); or

11.3.2 replace, modify or re-perform such affected Services (or affected part thereof) so that they become non-infringing, provided that such replacement, modification or re-performance does not adversely impact Customer's right or ability to use such affected Services (or affected part thereof).

If neither of the foregoing options is reasonably possible for Supplier to accomplish, then Supplier shall refund to Customer an appropriate pro rata portion of the amounts paid for such affected Services (or affected part thereof) pursuant to this Agreement and reimburse Customer for its reasonable expenses of removal, replacement and/or re-performance of such affected Services (or affected part thereof).

12. INSURANCE

12.1 Supplier shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain the insurance coverage listed below:

12.1.1 Workers' Compensation insurance with (1) statutory limits of coverage; and (2) although not required by statute, coverage for any employee entering onto the Customer's premises.

12.1.2 Employers' Liability or "Stop Gap" insurance with limits of not less than One Hundred Thousand Dollars for each accident.

12.1.3 Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage occurring or arising out of the performance of this Agreement, including coverage for independent contractor's protection (required if any work will be subcontracted), premises-operations, products/completed operations and contractual liability with respect to the liability assumed by Supplier hereunder. The limits of insurance shall not be less than:

Each Occurrence	\$1,000,000.00
General Aggregate Limit	\$2,000,000.00
Products-Completed Operations Limit	\$1,000,000.00
Personal and Advertising Injury Limit	\$1,000,000.00

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- 12.1.4 Should performance of this Agreement involve any use of automobiles, comprehensive automobile liability insurance covering the ownership, operations, and maintenance of all owned, non-owned and hired motor vehicles with limits of not less than One Million Dollars per occurrence for bodily injury and property damage.
- 12.1.5 Professional liability insurance with limits of not less than One Million Dollars.
- 12.2 Supplier shall forward to Customer certificates of such insurance issued by the insuring carrier or carriers in the form of the industry standard practice. Supplier shall not commence any work hereunder until the obligations of Supplier with respect to insurance have been fulfilled. The fulfillment of such obligations, however, shall not otherwise relieve Supplier of any liability assumed hereunder or in any way modify Supplier's obligations to indemnify Customer.
- 12.3 Customer shall be authorized by Supplier to confer directly with the agent or agents of the insuring carrier or carriers concerning the extent and limits of Supplier's insurance coverage in order to assure the sufficiency thereof for purposes of the work to be performed hereunder. Customer reserves the right to approve or disapprove the insurers and form of policies, which approval will not be unreasonably withheld.
- 12.4 Supplier shall require its subcontractors who may enter upon Customer's premises to maintain insurance as described above.
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- 13. HAZARDOUS MATERIALS AND SUBSTANCES**
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- 13.1 Hazardous materials and substances provided hereunder shall be shipped by Supplier in accordance with the requirements of The Hazardous Materials Transportation Act (49 USC 1801, et seq.), the Environmental Protection Agency, the United States Department of Transportation regulations, and any other federal, state, and local laws and regulations governing conveyance of hazardous materials or any accidents or incidents in connection with the shipping of the hazardous materials and substances.
- 13.2 Supplier shall properly package, mark and identify products containing hazardous materials or substances including, but not limited to, those governed by the Resource Conservation and Recovery Act (42 USC 6901, et seq.), The Hazardous Materials Transportation Act (49 USC 1801, et seq.), Toxic Substances Control Act of 1976 (15 USC 2601, et seq.), and any other similar acts or regulations promulgated pursuant to these or other applicable acts. Each component, self-contained unit, and carrier shall be marked identifying the hazardous materials or substances by name, as required by applicable law.
- 13.3 All products that are hazardous will further comply with all special Customer requirements. Supplier shall furnish Customer with Material Safety Data Sheets that are consistent with and include information required by the Occupational Safety and Health Act of 1970 (OSHA) Hazard Communication Standard (29 CFR 1910.1200), as the same may be amended or supplemented from time to time.
- 13.4 Supplier shall indemnify and hold Customer harmless in accordance with the Article entitled "Indemnity" for any liability or claim that may be sustained by reason of

Supplier's failure to comply with any rules, regulations, or laws governing hazardous materials and/or substances including, but not limited to, those enumerated in this Article.

14. ADVERTISING

No identification of Customer, references to Customer or references to Customer's names, marks, logos, drawings or specifications will be used in any of Supplier's advertising, publicity or promotional materials referring to any of the Standard Software, Development Software or Services, unless Customer's written permission shall first have been obtained.

15. PLANT AND WORK RULES

Supplier and Customer, while on the premises of the other, shall comply with all plant rules and regulations including, where required by governmental regulation, submission of satisfactory clearance from the appropriate governmental authorities.

16. TIME IS OF ESSENCE

Time of performance is of the essence in this Agreement and a substantial and material term hereof.

17. COMPLIANCE WITH LAWS

17.1 Unless exempt under the rules and regulations of the Secretary of Labor or other proper authority, this Agreement is subject to applicable laws and orders relating to equal opportunity and nondiscrimination in employment as shown in the attached Exhibit 5, entitled "Nondiscrimination and Compliance Agreement," attached hereto and incorporated herein by this reference.

17.2 Each party shall obtain and maintain at its own expense all permits and licenses which it is required by law to obtain with respect to the Trial, and any Standard Software, Development Software or Services associated therewith, and shall give all notices, pay all fees, and comply with all laws, ordinances, rules and regulations relating to its performance obligations specified herein.

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18. DISPUTE RESOLUTION

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18.1 If any claim, controversy or dispute of any kind or nature whatsoever arises by reason of or out of or relates to this Agreement ("Dispute") and such Dispute cannot be settled through negotiation, the parties agree to attempt to settle the Dispute through non-binding mediation under the Commercial Mediation Rules of the American Arbitration Association ("AAA"). If the parties cannot settle the matter through mediation, then any Dispute shall be resolved by arbitration as provided in this Article. Federal law shall govern the arbitrability of all claims.

18.2 Three (3) arbitrators engaged in the practice of law, who are knowledge-able about the subject matter of this Agreement and the matter in Dispute, shall conduct the arbitration under the then-current rules of the AAA, unless otherwise provided herein. The arbitrators shall be selected in accordance with AAA procedures from a list of qualified people maintained by the AAA. The arbitration shall be conducted at a location mutually agreed upon by the parties, and all expedited procedures prescribed by the AAA rules shall apply.

- 18.3 The arbitrators shall have the discretion to order a pre-hearing exchange of information by the parties. Either party may request from the arbitrators injunctive relief to maintain the status quo until such time as the arbitration award is rendered or the Dispute is otherwise resolved. The arbitrators shall not have authority to award punitive damages. Upon the request of either party, the arbitrators' award shall include findings of fact and conclusions of law.
- 18.4 Each party shall bear its own costs and attorneys' fees, and the parties shall share equally the fees and expenses of the arbitrators. The arbitrators' decision and award shall be final and binding, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.
- 18.5 If either party files a judicial or administrative action asserting claims subject to arbitration, as prescribed herein, and the other party successfully stays such action and/or compels arbitration of said claims, the party filing said action shall pay the other party's costs and expenses incurred in seeking such stay and/or compelling arbitration, including reasonable attorneys' fees.

19. GOVERNING LAW

This Agreement shall be governed by and construed in all respects in accordance with the laws of the State of Colorado and of the United States of America as to both substance and procedure.

20. AMENDMENTS

No change or modification of any terms or conditions herein shall be valid or binding on either party unless made in writing and signed on behalf of Customer (or its authorized agent, U S WEST Business Resources, Inc.) and an authorized representative of Supplier.

21. LIMITED LIABILITY OF U S WEST BUSINESS RESOURCES, INC.

U S WEST Business Resources, Inc. acted as agent for Customer in the negotiation and execution of this Agreement and may act as agent for Customer in the administration of this Agreement, but U S WEST Business Resources, Inc. shall not in any event be liable for the performance or nonperformance of this Agreement or any Task Orders by Customer, except to the extent that U S WEST Business Resources, Inc. elects to exercise on its own behalf any rights of Customer under this Agreement or any related Task Order.

22. SURVIVAL

The provisions of this Agreement that are intended to survive performance by either or both parties, shall also survive the completion, expiration, termination or cancellation of this Agreement or any Task Orders.

23. BUSINESS CONDUCT

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Customer has adopted and follows a Code of Business Ethics and Conduct which imposes on itself and its employees an obligation to deal with all suppliers and contractors in a fair and open manner in accordance with the highest standards of integrity. Supplier acknowledges and agrees that it shall perform to the highest level of business and professional ethics, and that it has not made or received and shall not make or receive any payments, gifts, favors, entertainment, secret commissions or hidden gratuities for the purpose of securing preferential treatment or action from or to any party in connection with

this Agreement or any of the Standard Software, Development Software or Services. Any breach or failure with respect to this provision shall constitute a material breach of this Agreement.

24. NOTICES

- 24.1 Where written notices, demands, or other communications are required or permitted under this Agreement to be made in writing, they shall be deemed duly given when made in writing and delivered in hand, or upon receipt when properly addressed return-receipt-requested and delivered by United States Postal Service or other delivery service to the following addresses:

If to Customer: Dennis R. Kamstra
U S WEST Business Resources, Inc.
188 Inverness Drive West, Suite 270
Englewood, Colorado 80112

With a copy to: Audley Webster
U S WEST Communications, Inc.
1999 Broadway, 28th Floor
Denver, Colorado 80202

Debbie Schmidt
US WEST Marketing Resources Group, Inc.
198 Inverness Drive West
Englewood, CO 80112

If to Supplier: D. Rex Golding
The 3DO Company
600 Galveston Drive
Redwood City, California 94063

With a copy to: James Alan Cook
General Counsel & VP, Business Affairs
The 3DO Company
600 Galveston Drive
Redwood City, California 94063

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- 24.2 Addresses may be changed by written notice to the parties in accordance with the procedures referenced in this Section 24.

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25. CONFIDENTIAL INFORMATION

- 25.1 As used herein, "Confidential Information" shall mean any technical or business information furnished, in whatever form or medium, or disclosed by one party to the other, including, but not limited to, Specifications for any of the Development Software or Services, prototypes, computer programs, models, drawings, marketing plans, financial data and personnel statistics (but specifically excluding any of such information of or concerning the Standard Software), which is marked as confidential or proprietary; or for information which is orally disclosed, the disclosing party clearly indicates to the receiving party at the time of disclosure the confidential or proprietary nature of the information and confirms the confidential or proprietary nature in writing within thirty days after the disclosure. Any third-party

information furnished or disclosed and marked as or stated to be confidential or proprietary shall be deemed Confidential Information and shall be subject to the terms and conditions herein. Any such Confidential Information that was disclosed by either party prior to the execution of this Agreement shall be summarized in writing by the disclosing party and be provided to the other party within thirty days after the respective date of such disclosing party's execution of this Agreement.

- 25.2 Notwithstanding anything to the contrary contained herein, Customer acknowledges and agrees that Supplier is in the business of designing and developing applications software products and system software, independent of this Agreement, for use with multimedia hardware systems that are distributed by or under license from Supplier. Nothing in this Agreement shall be deemed to prevent or otherwise restrict Supplier from directly or indirectly designing and developing any computer program (and related audiovisual displays) and other works, whether similar or dissimilar to any copyrightable expressions of any of the ideas, concepts and/or related materials contained within any Confidential Information disclosed by Customer in furtherance of this Agreement, provided that any such separate software products, system software, computer programs, related audiovisual displays and other works (collectively, "Separate Software Products") do not infringe upon any of the copyrightable features or elements contained and/or depicted in any such Confidential Information or incorporate any such Confidential Information or result in the actual publication or direct or indirect disclosure of any such Confidential Information.

- 25.3 Subject to the provisions of Section 25.5, each party, as a receiving party, agrees to hold the other party's Confidential Information in strictest confidence and shall use same solely for the purposes of this Agreement unless otherwise permitted hereunder and/or as authorized in writing by the disclosing party. The receiving party shall not copy such Confidential Information except for the purposes of this Agreement unless the express written permission of the disclosing party is first obtained. The receiving party shall not disclose such Confidential Information to anyone (including consultants

and subcontractors) except employees of the receiving party to whom disclosure is necessary for the purposes set forth in this Agreement. The receiving party shall appropriately notify each such employee that the disclosure is made in confidence and must be kept in confidence in accordance with this Agreement. In the event that it is necessary for the purposes of this Agreement to disclose Confidential Information to independent contractors or other agents, the receiving party may do so after first obtaining a written confidentiality agreement containing terms no less restrictive than the terms in this Agreement. The obligations set forth herein shall be satisfied by each party through the exercise of the same degree of care used to restrict disclosure and use of its own information of like importance, which in no event shall be less than a reasonable standard of care.

- 25.4 All copies of such Confidential Information in written, graphic or other tangible form shall be returned to the disclosing party following the expiration, termination or cancellation of this Agreement.

- 25.5 The obligations imposed in this Article shall not apply to any information that:

25.5.1 was already in the possession of the receiving party (as of the date of initial disclosure); or

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